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GENEVA
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LOS ANGELES

101 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94111

+1 (415) 591-1000

FACSIMILE +1 (415) 591-1400

www.winston.com

MOSCOW
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WASHINGTON, D.C.

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BRADLEY R. MARSH
Attorney at Law
(415) 591-1585
bmarsh@winston.com

By Email (glenna.schultz@boe.ca.gov)

Ms. Glenna Schultz
State Board of Equalization
Property and Special Taxes Dept.
450 N. Street
Sacramento, CA 94279-0064

Re: Comments on Proposed Revisions to Property Tax Rule 462.040

Dear Ms. Schultz:

We submit the following comments and suggestions regarding the proposed changes to Property Tax Rule 462.040 distributed in Letter to Assessor 2012/021:

1. Subsection (b)(1), Example 4.

The language proposed by the California Assessor's Association ("CAA") would completely reverse the outcome of a common transaction, and is contrary to the relevant statute. Revenue and Taxation Code Section 65(b) states, in part, as follows:

> There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers.

Example 4 of subsection (b)(1) involves two people creating a joint tenancy who remain joint tenants after its creation. There is no statutory requirement, express or implied, that a third person be involved. If the legislature had intended such an odd result, it would have been more explicit. The proposed change would lead to the opposite result of the statutory language and should be rejected.

In addition, the proposed language, requiring a third person to be involved, is illogical. Why does the proposed amendment attempt to prohibit two people from creating a joint tenancy in

which they would be considered original transferors? Requiring two people to create a joint tenancy and then create a second joint tenancy that adds a third person in order to achieve the benefit of original transferor status makes little sense, and the CAA has offered no justification, either in law or policy, supporting the change.

2. Subsection (b)(1), Example 7-2.

The CAA's proposal to remove this example from the regulation is unnecessary and could create confusion. Revenue and Taxation Code Section 65(b) states, in part, as follows:

> The spouses of original transferors shall also be considered original transferors within the meaning of this section.

Existing example 7-2 of subsection (b)(1) simply explains a reasonably common occurrence when such rule would be applied.

In real world terms, the example could involve a situation where a daughter and her mother own a property as joint tenants. The daughter now wishes the property to be owned by her mother and her husband. Daughter and her mother transfer the property to mother and husband. The statute clearly provides that the spouses of original transferors shall also be considered original transferors. Thus, the example does not broaden what is allowed by the Code, as alleged by the CAA. Moreover, removing this example is unnecessary and could create confusion when taxpayers are looking to understand how the provision might work.

3. Subsection (b)(3), Example 13.

Changing this example is unnecessary and creates the same problems as the proposed changes to Subsection (b)(1), Example 4. As discussed above, there should be no dispute that the statute contemplates individuals transferring property to themselves as joint tenants are entitled to "original transferor" status. The proposed change confuses the issue and makes the existing example less meaningful.

4. Subsection (b)(4), Example 14-2.

The proposed regulatory addition is contrary to existing law.

Section 65(a) states that "[t]he creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63." Section 62 (a)(1) provides that a change in ownership does not include "[a]ny transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common." Section 62(a)(2) provides that a change in ownership does not include "[a]ny transfer between... individuals and a legal entity... that results solely in a change in the method of holding title to the real property...." Therefore, Section 65 specifically incorporates the proportional transfer exclusion. The regulations also support this result. (*See* Cal. Code

Regs., tit. 18, §§ 462.040(b)(4)(C) [a transfer terminating a joint tenancy and transferring the real property to an entity where the interests of the transferors and the transferees remain the same after the transfer is not a change in ownership], 462.180(b)(2), Example 4 [providing that the transaction, performed in reverse order, also is not a change in ownership.])

In addition, as indicated in the CAA's request, the CAA's position on this issue has been rejected by at least one assessment appeals board and the superior court that reviewed that decision. That case is pending before the Court of Appeal, so it would be premature and improper for the Board to initiate a Rule change now that may contradict the Court's interpretation of how Sections 62, 63, and 65 interact with regard to this issue. Historically, the Board has refused to take such action during the pendency of an appeal.

Thank you for your consideration.

Very truly yours,

Bradley R. Marsh